

NTSB Order No. EA-5055

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 2nd day of September, 2003

MARION C. BLAKEY
Administrator,
Federal Aviation Administration,

Complainant,

v.

JOHN BRUCE DEVILLE,

Respondent.

Docket SE-16644

Respondent appeals the oral initial decision of Administrative Law Judge William A. Pope, II, issued on March 13, 2003.¹ By that decision, the law judge affirmed the Administrator's revocation of respondent's Master Parachute Rigger Certificate, Airman Pilot Certificate with commercial privileges, and Airman Mechanic Certificate with airframe and

¹ An excerpt of the hearing transcript containing the law judge's decision is attached.

powerplant ratings for violations of sections 65.20(a)(2), 65.129(e) and 65.131(a) of the Federal Aviation Regulations (FARs).² We deny respondent's appeal.

² FAR sections 65.20, 65.129, and 65.131, 14 C.F.R. Part 65, provide, in relevant part, as follows:

Sec. 65.20 Applications, certificates, logbooks, reports, and records: Falsification, reproduction, or alteration.

(a) No person may make or cause to be made:

* * * * *

(2) Any fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used, to show compliance with any requirement for any certificate or rating under this part[.]

* * * * *

Sec. 65.129 Performance standards.

No certificated parachute rigger may --

* * * * *

(e) Pack, maintain, or alter a parachute in any manner that deviates from procedures approved by the Administrator or the manufacturer of the parachute;

* * * * *

Sec. 65.131 Records.

(a) Each certificated parachute rigger shall keep a record of the packing, maintenance, and alteration of parachutes performed or supervised by him. He shall keep in that record, with respect to each parachute worked on, a statement of --

- (1) Its type and make;
- (2) Its serial number;
- (3) The name and address of its owner;
- (4) The kind and extent of the work performed;

The Administrator's July 25, 2002 Amended Order of Revocation alleged, among other things, the following facts and circumstances:

1. You hold Master Parachute Riggers Certificate No. 1829798 with back, chest and seat ratings.
2. You also hold Airman Certificate No. 2419187 with commercial pilot privileges, and Airman Mechanic Certificate No. 2447452 with airframe and powerplant ratings and an Inspection Authorization.
3. On February 20, 2001, inspectors from the Baton Rouge Flight Standards District Office (BTR FSDO) investigated a fatal parachuting accident at Shreveport Downtown Airport on February 18, 2001, in which the main and the reserve chute failed to open.
4. Part 105 of the Federal Aviation Regulations requires Auxiliary Parachutes to be repack[ed] every 120 days.
5. The investigation described in paragraph three (3) revealed that the Parachute Record Log contained in the auxiliary parachute, Serial No. 03217883, utilized by the parachutist involved in the fatal jump, showed that the parachute was last packed by you on August 10, 2000.
6. During the inspection described in paragraph three (3), when you were requested to provide your records for the parachute used in the fatal jump, you were unable or unwilling to provide those records.
7. On or about May 2, 2001, you presented to the FAA a copy of your Parachute Riggers Record for auxiliary parachute, Serial No. 03217883, containing an entry that alleges you repacked that parachute on January 5, 2001.
8. On or about September 19, 2001, you presented to the FAA a second Parachute Record Log for auxiliary parachute, Serial No. 03217883 containing an entry that alleges you repacked that parachute on January 5, 2001.

(..continued)

- (5) The date when and place where the work was performed;
and
- (6) The results of any drop tests made with it.

* * * * *

9. With respect to the entries described in paragraphs seven (7) and eight (8), you made a [sic] fraudulent or intentionally false entries to your Parachute Rigger Record and the Parachute Record Log and for the auxiliary parachute, Serial No. 03217883, in that you did not repack that parachute on January 5, 2001.

10. The manufacturer's manual for the FXC Model 12000 Automatic Activation Device used on auxiliary parachute, Serial No. 03217883, requires that the FXC Model 12000 be chamber tested every repack cycle.

11. The Parachute Record Log contained in the auxiliary parachute described in paragraph five (5) reflected that on April 17, 1999, August 22, 1999, January 11, 2000, April 8, 2000, and August 10, 2001, you repacked that parachute.

12. The investigation described in paragraph three (3) revealed that at the times of your packing described in paragraph eleven (11), you did not chamber test the FXC Model 12000 Automatic Activation Device, in that you did not possess an altitude test chamber.

13. The manufacturer's manual for Rigging Innovations, Inc. Telesis Dual Parachute Harness and Container Assembly auxiliary parachute, Serial No. 03217883, requires that the ORANGE WARNING! LABEL must be filled out by the rigger assembling and packing that parachute, and failure to do so will result in the TSO being null and void.

14. The investigation described in paragraph three (3) revealed that at the times of your packing described in paragraph eleven (11), you did not fill out the ORANGE WARNING! LABEL, in that label did not contain any of the required information.

15. Part 65 of the Federal Aviation Regulations requires that each certificated parachute rigger shall keep a record of the packing, maintenance, and alteration of parachutes performed or supervised by him.

16. The investigation described in paragraph three (3) revealed that you did not keep a record of your packing described in paragraph eleven (11).

The law judge, based on all of the evidence presented at the hearing, concluded that the Administrator had met her burden of showing that respondent had violated the FARs as alleged.

On appeal, respondent, appearing pro se, raises various procedural issues. Substantively, respondent argues that the law judge erred in affirming one of two alleged violations of FAR section 65.129(e) because a finding of the violation was based on an erroneous finding that respondent was required by the FARs to chamber test (as required by the manufacturer's manual) the automatic activation device ("AAD") fitted to the accident auxiliary parachute. Respondent also argues that the law judge erred in affirming the violation of FAR section 65.20(a)(2).³

Turning first to the alleged procedural errors, our review of the record does not support respondent's claims. First, he argues that the Administrator was allowed to "broaden the scope" of her pleadings to respondent's surprise and detriment, when the law judge allowed the Administrator to introduce evidence regarding the parachute harness worn by the accident victim. However, the record is clear that the "new" evidence objected to by respondent was the parachute harness referenced in

³ Respondent also argues that the law judge should have dismissed the Administrator's complaint because the Administrator did not offer respondent the opportunity to participate in an informal conference. However, respondent was afforded such an opportunity in conjunction with service of the Administrator's Notice of Proposed Certificate Action, but never requested an informal conference but instead filed discovery requests. Indeed, when respondent first raised the issue, after the order of revocation was served, the Administrator did not refuse him an informal conference, and, instead, respondent declined to take advantage of the opportunity because the Administrator was not willing to conduct it under the terms sought by respondent (without the presence of the investigating FAA inspectors, and not in Baton Rouge where the local FSDO is located). We discern no merit in respondent's claim that he was denied the process mandated by Section 609(a) of the Federal Aviation Act (now codified at 49 U.S.C. § 44709).

respondent's own records that were, in turn, referenced in the Administrator's pleadings. Respondent was afforded ample notice of the charges, and evidence, against him. Second, respondent alleges that the law judge erred in not deeming unanswered requests for admissions as having been admitted by the Administrator. These requests were served upon the Administrator only two weeks prior to the hearing, well beyond the normal timeframe for such requests, and the Administrator objected to them. We discern no error in the law judge's exercise of his discretion in denying respondent's motion for adverse inferences. Finally, respondent claims the law judge unfairly prejudiced his defense by modifying, after respondent presented his case in defense, a ruling as to the limited admissibility of Exhibit A-2, which was respondent's response to a letter of investigation from the FAA. However, respondent did not object to the law judge's ruling to allow the admissibility of Exhibit A-2 for general purposes, and thus he did not preserve this argument for appeal.⁴

Turning to substantive matters, neither of respondent's above-mentioned arguments, nor any of the other arguments (which we deem too trivial to address), have any merit. Regarding the first argument, FAA Inspector Lamont Williford, who was accepted by the law judge as an expert in skydiving and parachute rigging, testified that the FAA's Technical Standards Order certifying the

⁴ Even if respondent had preserved this argument, respondent fails to show how he was unfairly prejudiced by an evidentiary ruling that allowed full use of a letter he wrote in response to the FAA's investigation.

Rigging Innovations, Inc., parachute harness specifically incorporated the manufacturer's manual by reference. Thus, Inspector Williford testified, the manual's requirement that the AAD "must be chamber tested every repack cycle" (which respondent admits he did not do) was mandatory for purposes of FAR section 65.129(e). Respondent demonstrates no legitimate basis for disturbing the law judge's findings on this issue.

Respondent's argument that the law judge erred in affirming the FAR section 65.20(a)(2) violation is predicated on an incorrect reading of the hearing transcript, for, contrary to respondent's assertions on appeal, the Administrator charged that he falsified Exhibits A-3 and A-4, i.e., the records and parachute log he presented to the FAA inspectors during their investigation. Respondent reiterates rejected testimony, but offers no genuine basis to disturb the law judge's credibility-based determinations on this issue. See, e.g., Administrator v. Smith, 5 NTSB 1560, 1563 (1986)(the Board defers to credibility findings of its law judges absent a showing that they were clearly erroneous).

After considering all of respondent's arguments, and conducting our own review of the record, we discern no basis to disturb the law judge's decision to affirm the Administrator's order of revocation.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The law judge's decision affirming the Administrator's Emergency Order of Revocation of all airman certificates held by respondent is affirmed.

ENGLEMAN, Chairman, ROSENKER, Vice Chairman, and GOGLIA, CARMODY, and HEALING, Members of the Board, concurred in the above opinion and order.